

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 419 of 2004

SMT. URMILA KUMARI
V/S
GORDHAN & ORS

Mr. SAJJAN SINGH for Mr. JAIKISHAN BHAIYA, for the
appellant / petitioner

Date of Order : 17.10.2006

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the appellant, and
perused the impugned judgments.

The plaintiff-appellant had filed the suit for
permanent injunction and damages, alleging inter-alia, that
she is a tenant through her husband in shop no.9, wherein
earlier she was carrying on business of Bakery. Then for
some time she carried on business of foot wear, the shops
situated in the right hand side of the shops in question
being shop no.10 and 11 are of A-1 Shoe Emporium. It was
then alleged that in September 1969, the plaintiff started
business in the name and style of Sari Emporium, which
business was looked after by her husband. The rent was
subsequently increased, and was being paid to the landlord,
and after his death, to his wife, and then to Hukam Singh

through cheques. It was also alleged that the shop is duly registered under the Shops and Commercial Establishments Act, and the plaintiff is regular income tax assessee. It was then alleged that defendants no.4 and 5 were managers in the plaintiff's business during different times, i.e. defendant no.5 was manager from 1969 to 1974, while defendant no.4 was manager from February 1974 to September 1975. It was alleged that defendant no.4 was removed from service on 30.9.75, annoyed thereby, with the help of other defendants, on 23.10.75 he trespassed into the plaintiff's shop through A-1 Shoe Emporium, and bolted the shop from inside, and prevented the plaintiff from going into the shop. However, this restrain was removed on 16.12.75, and the plaintiff started carrying on business. Then on 31.12.75, when the plaintiff's husband came to house after locking the shop, and thereafter fell ill, and then on 3.2.76, when the plaintiff wanted to open the shop, it could not open, as it was bolted from inside, and the defendants took away the stock. It was alleged that defendant has no such right to bolt the shop like this. Inter-alia with these averments, the suit has been filed, praying for removal of the restrain, injunction prohibiting them from disturbing the plaintiff's possession, and for damages for disturbance of her possession.

The defendants no.2, 4 and 5 contested the suit, alleging that in the backside of shop no.9 there is a door,

where-from it is accessible from the shop no.10 and 11. It was alleged that shop no.10 and 11 were also taken on rent by plaintiff's husband from Ram Lal, and the business of A-1 Shoe Emporium was opened in the partnership of the plaintiff's husband. Then in 1971 the plaintiff's husband retired, since then defendants no.1 to 3 are in possession, and that plaintiff is in the habit of taking the premises on rent in the name of her husband, and sublet the premises, and in that process, shop no.9 was sublet to defendants no.2 and 4 in 1968, wherein they carried on business in the name and style of Jyoti Foot Wear, which business was stopped, and the entire stock was handed over to A-1 Shoe Emporium. Entry in regard to price of goods was made in the cash-book of A-1 Shoe Emporium by the plaintiff's husband. It was then alleged that the Sari business was started by defendant no.5 in 1969 in shop no.9, thereafter that business was looked after by defendant no.4, and the defendant no.4 and 5 were working as sole owner of the business, and in order to get out of the consequences of subletting, the things were done in the name of the plaintiff. Then the plaintiff wanted to enhance the rent from Rs.420/- to 700/-, and on defendants declining, the plaintiff wanted to interfere in the business, which he was not allowed, and therefore, the suit has been filed, which is required to be dismissed.

The learned lower Appellate Court, after

appreciating the evidence, has found, that from the entire evidence, led on the side of the plaintiff, the stand of the plaintiff is not at all reliable, rather the stand of the defendant is more reliable, and that the plaintiff has failed to establish that she was carrying on business in the shop, as neither any books of accounts, nor bills about the purchase of the goods have been produced, nor the neighboring dealers have been examined. Likewise, it has been found that the evidence of Manohar Singh and Ishwar Singh is not reliable, and is self-contradictory. Thus, the plaintiff has failed to establish to be in possession, and to have been carrying on business, rather things were managed to get out of the consequences of subletting. It has also been found, that the plaintiff has concealed the truth from the Court.

In my view, the findings recorded by the learned Courts below are pure findings of fact, and are not vitiated on any other ground available under Section 100 CPC.

The appeal thus does not involve any substantial question of law. The same is, therefore, dismissed summarily.

(N P GUPTA), J.

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